

No. PD-0810-19

TO THE COURT OF CRIMINAL APPEALS
OF THE STATE OF TEXAS

FILED
COURT OF CRIMINAL APPEALS
3/19/2021
DEANA WILLIAMSON, CLERK

THE STATE OF TEXAS,

Appellant

v.

RICARDO MATA,

Appellee

Appeal from Hidalgo County
Appellate Cause Number 13-17-00494-CR
Trial Cause Number CR-2611-16-B

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**STATE'S REPLY BRIEF AND MOTION TO FILE
ITS REPLY BRIEF**

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TO THE HONORABLE COURT OF CRIMINAL APPEALS:

Pursuant to TEX. R. APP. P. 70.4, the State moves this Court to permit the filing of this brief addressing a new issue raised in Respondent Ricardo Mata’s brief.

Mata alleges that the issue presented in this appeal is moot because—while the appeal was pending in the Thirteenth Court of Appeals—the trial court disposed of the case through a plea-bargain agreement. Actually, the shoe is on the other foot. It is the trial court proceeding that is a nullity. Under the rules of appellate procedure, “[o]nce the record has been filed in the appellate court, all further proceedings in the

trial court—except as provided otherwise by law or by these rules—will be suspended until the trial court receives the appellate-court mandate.” TEX. R. APP. P. 25.2(g). As this Court held in *State v. Robinson* and *Ex parte Macias*, “the trial court is deprived of jurisdiction over the case during the pendency of” an appeal and it cannot be regained until the mandate issues.¹ Neither can the parties waive jurisdiction by agreement.²

Here, jurisdiction vested in the court of appeals in October 2017, when both reporter’s and clerk’s records were filed.³ No mandate has issued. Mata alleges that, following a plea agreement, the trial court purportedly placed him on deferred-adjudication probation in October 2018. Because the trial court lacked jurisdiction

¹ 498 S.W.3d 914, 921 (Tex. Crim. App. 2016) (State’s appeal of shock probation order stayed proceedings until mandate issued when jurisdiction returned to trial court); 541 S.W.3d 782, 783 (Tex. Crim. App. 2017) (double jeopardy did not bar re-prosecution of case begun and mistried after appellate court opinion but before mandate had issued because the trial court lacked jurisdiction over the case at that time).

² *State v. Roberts*, 940 S.W.2d 655, 657 (Tex. Crim. App. 1996), *overruled on other grounds by State v. Medrano*, 67 S.W.3d 892 (Tex. Crim. App. 2002); *see also Macias*, 541 S.W.3d at 786 n.23 (trial conducted after State’s appeal of suppression order and before appellate court mandate did not “favor the application of estoppel” as both parties could have ascertained that the trial court lacked jurisdiction).

³ *See* Appellate Cause No. 13-17-00494-CR, Thirteenth Court of Appeals, *available online at* <https://search.txcourts.gov/Case.aspx?cn=13-17-00494-CR&coa=coa13>.

at that time, that proceeding was a nullity. Thus, the controversy between the parties is still live.

PRAYER FOR RELIEF

The State of Texas prays that this Court will permit the filing of this reply brief, reach the merits of this appeal, and reverse the court of appeals' and the trial court's decisions suppressing the State's evidence.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that according to Microsoft Word's word-count tool, this document contains 433 words.

/s/ *Emily Johnson-Liu*
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CERTIFICATE OF SERVICE

The undersigned certifies that on this 18th day of March 2021, the State's

Reply Brief was served electronically on the parties below.

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